

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1041

5 By: Representative Ladyman
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE AWARD
9 PROCEDURE FOR CERTAIN PUBLIC CONTRACTS; AND FOR OTHER
10 PURPOSES.
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12

Subtitle

13 TO AMEND THE LAW CONCERNING THE AWARD
14 PROCEDURE FOR CERTAIN PUBLIC CONTRACTS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 14-58-303(b), concerning purchases and
21 contracts in a city of the first class, is amended to read as follows:

22 (b)(1)(A) Except as provided under § 14-58-104, the municipal
23 governing body of any city of the first class shall provide by ordinance the
24 procedure for making all purchases which do not exceed ~~the sum of twenty~~
25 ~~thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000).

26 (B) Except as provided under § 14-58-104, the municipal
27 governing body of any city of the second class or incorporated town may
28 provide by ordinance the procedure for making all purchases.

29 (2)(A)(i) Except as provided under § 14-58-104, in a city of the
30 first class where the amount of expenditure for any purpose or contract
31 exceeds ~~the sum of twenty thousand dollars (\$20,000)~~ fifty thousand dollars
32 (\$50,000), the mayor or the mayor's authorized representative shall invite
33 competitive bidding on the purpose or contract by legal advertisement in any
34 local newspaper.

35 (ii) Bids received ~~pursuant to~~ under the
36 advertisement shall be opened and read on the date set for receiving the bids



1 in the presence of the mayor or the mayor's authorized representative.

2 (iii) The mayor or the mayor's authorized
 3 representative shall have exclusive power to award the bid to the lowest
 4 responsible bidder, but may reject any and all bids received.

5 (B) The governing body by ~~ordinance~~ resolution may waive
 6 the requirements of competitive bidding in exceptional situations where this
 7 procedure is deemed not feasible or practical or as provided under § 14-58-
 8 104.

9 (C) Cities of the first class, cities of the second class,
 10 and incorporated towns may accept competitive bids in the following forms:

- 11 (i) Written; or
- 12 (ii) Electronic media.

13
 14 SECTION 2. Arkansas Code § 22-9-203 is amended to read as follows:

15 22-9-203. Public improvements generally – Award procedure.

16 (a) Except as provided under § 14-58-105, a contract providing for the
 17 making of major repairs or alterations, for the erection of buildings or
 18 other structures, or for making other permanent improvements shall not be
 19 entered into by the state or an agency of the state or by a county,
 20 municipality, school district, or other local taxing unit with any contractor
 21 in instances in which all estimated costs of the work exceed ~~the sum of~~
 22 ~~thirty-five thousand dollars (\$35,000)~~ fifty thousand dollars (\$50,000)
 23 unless:

24 (1) The state or any agency of the state ~~shall have~~ has first
 25 published notice of its intention to receive bids one (1) time each week for
 26 not less than two (2) consecutive weeks for projects more than the amount of
 27 fifty thousand dollars (\$50,000) and published notice of its intention to
 28 receive bids one (1) time each week for not less than one (1) week for
 29 projects more than the quote bid limit, as provided under the minimum
 30 standards and criteria of the Building Authority Division of the Department
 31 of Finance and Administration, but less than or equal to fifty thousand
 32 dollars (\$50,000), in a newspaper of general circulation published in the
 33 county in which the proposed improvements are to be made or in a trade
 34 journal reaching the construction industry; and

35 (2) Any county, municipality, school district, or other local
 36 taxing unit ~~shall have~~ has first published notice of its intention to receive

1 bids one (1) time each week for not less than two (2) consecutive weeks in a
 2 newspaper of general circulation published in the county in which the
 3 proposed improvements are to be made or in a trade journal reaching the
 4 construction industry.

5 (b)(1) The date of publication of the last notice shall be not less
 6 than one (1) week before the day fixed therein for the receipt of bids.

7 (2) If there is no newspaper regularly published in the county
 8 in which the proposed work is to be done, the notices may be published in any
 9 newspaper having a general circulation in the county.

10 (3) ~~Nothing in this~~ This section shall not be construed as
 11 limiting to two (2) the number of weeks the notices may be published for
 12 projects ~~over the amount of~~ that exceed fifty thousand dollars (\$50,000),
 13 limiting to one (1) the number of weeks the notices may be published for
 14 projects more than the quote bid limit, as provided under subsection (a) of
 15 this section, and less than or equal to fifty thousand dollars (\$50,000), and
 16 as limiting to two (2) the number of weeks the notices may be published for
 17 all other projects.

18 (c)(1) All notices shall contain:

19 (A) A brief description of the kind or type of work
 20 contemplated;

21 (B) The approximate location thereof;

22 (C) The place at which prospective bidders may obtain
 23 plans and specifications;

24 (D) The date, time, and place at which sealed bids will be
 25 received;

26 (E) The amount, which may be stated in a percentage, of
 27 the bid bond required;

28 (F) A statement of the taxing unit's reservation of the
 29 right to reject any or all bids and to waive any formalities; and

30 (G) ~~Such other~~ Other pertinent facts or information which
 31 to it may appear necessary or desirable.

32 (2)(A)(i) Every bid submitted on public construction contracts
 33 for any political subdivision of the state is void unless accompanied by a
 34 cashier's check drawn upon a bank or trust company doing business in this
 35 state or by a corporate bid bond.

36 (ii) Every bid submitted on public construction

1 contracts for the state or any agency or department of the state is void
 2 unless accompanied by a cashier's check drawn upon a bank or trust company
 3 doing business in this state or by a corporate bid bond, except for projects
 4 ~~under thirty-five thousand dollars (\$35,000)~~ less than fifty thousand dollars
 5 (\$50,000).

6 (iii) A bid bond is not required for public
 7 construction contracts for the state or any agency or department of the state
 8 ~~under less than or equal to thirty-five thousand dollars (\$35,000)~~ fifty
 9 thousand dollars (\$50,000).

10 (B) This bid security shall indemnify the public against failure
 11 of the contractor to execute and deliver the contract and necessary bonds for
 12 faithful performance of the contract.

13 (C) The bid security shall provide that the contractor or surety
 14 ~~must~~ shall pay the damage, loss, cost, and expense subject to the amount of
 15 the bid security directly arising out of the contractor's default in failing
 16 to execute and deliver the contract and bonds.

17 (D) Liability under this bid security ~~shall be~~ is limited to
 18 five percent (5%) of the amount of the bid.

19 (d) On the date and time fixed in the notice, the board, commission,
 20 officer, or other authority in which or in whom authority is vested to award
 21 contracts shall open and compare the bids and thereafter award the contract
 22 to the lowest responsible bidder but only if it is the opinion of the
 23 authority that the best interests of the taxing unit would be served thereby.

24 (e) ~~In the event that~~ If all bids submitted exceed the amount
 25 appropriated for the award of the contract, the state agency or its
 26 designated representatives ~~shall have the authority to~~ may negotiate an award
 27 with the apparent responsible low bidder but only if the low bid is within
 28 twenty-five percent (25%) of the amount appropriated.

29 (f)(1) ~~In the event that~~ If all bids submitted exceed the amount
 30 appropriated for the award of the contract and if bidding on alternates was
 31 not required by the plans and specifications, the county, municipality,
 32 school district, other local taxing unit, or institution of higher education
 33 ~~shall have the authority to~~ may negotiate an award with the apparent
 34 responsible low bidder but only if the low bid is within twenty-five percent
 35 (25%) of the amount appropriated.

36 (2) If the plans and specifications for the project require bids

1 on alternates in addition to a base bid, there shall be no more than three
2 (3) alternates, and the alternates shall:

3 (A) Be deductive; and

4 (B) Be set forth in the plans and specifications in
5 numerical order.

6 (3) If all bids submitted exceed the amount appropriated for the
7 award of the contract, then the county, municipality, school district, other
8 local taxing unit, or institution of higher education may determine the
9 apparent responsible low bidder by deducting the alternates in numerical
10 order.

11 (4) After making the deductions, if the cost of the project is
12 less than twenty-five percent (25%) above the amount appropriated, then and
13 only in that event, the county, municipality, school district, other local
14 taxing unit, or institution of higher education may negotiate an award with
15 the low bidder so determined.

16 (g) Whenever it is obvious from examination of the bid document that
17 it was the intent of a bidder to submit a responsive bid and that the bid, if
18 accepted, would create a serious financial loss to the bidder because of
19 scrivener error, such as the transposition of figures, the board, commission,
20 officer, or other authority in which or in whom authority is vested has the
21 authority to relieve the bidder from responsibility under the bond and may
22 reject the bid.

23 (h) For projects of this state or any agency of the state, "amount
24 appropriated" within this section means funds currently available for the
25 project as determined by the state or any agency or department of the state
26 or any county, municipality, school district, or other local taxing unit
27 prior to the opening of any bids.

28 (i) ~~No~~ A contract providing for the making of major repairs or
29 alterations, for the erection of buildings or other structures, or for making
30 other permanent improvements shall not be entered into by the state, any
31 agency of the state, any county, municipality, school district, or other
32 local taxing unit with any contractor in instances ~~where~~ in which all
33 estimated costs of the work ~~shall exceed the sum of~~ seventy-five thousand
34 dollars (\$75,000) unless the bid documents contain statements ~~which~~ that
35 encourage the participation of small, minority, and women's business
36 enterprises.

1 (j)(1) Notwithstanding any other provision of law ~~to the contrary~~, any
2 municipality or sanitation authority may enter into contracts with private
3 persons, firms, associations, corporations, joint ventures, or other legal
4 entities, including a combination of any of those entities, to provide for
5 the design, building, operation, and maintenance of all or any portion of its
6 wastewater treatment system, storm water treatment system, or water treatment
7 system, or any combination of those systems.

8 (2) The contracts may include provisions for the design,
9 financing, construction, repair, reconditioning, replacement, operation, and
10 maintenance of the system, or any combination of those services and
11 functions.

12 (3) ~~Prior to~~ Before entering into a contract under this section,
13 the governing authority shall solicit qualifications-based competitive sealed
14 proposals.

15 (4) The governing authority shall first establish criteria for
16 evaluation of any entity submitting proposals on the contracts for the
17 purpose of assisting the governing authority in making a review of the
18 entity's previous performance on projects of comparable nature and magnitude
19 and the environmental compliance record of the entity during the five (5)
20 years immediately preceding the execution of the contract.

21 (5) The governing authority shall take into consideration the
22 information to assist in determining the eligibility of any entity.

23 (6) The award of a contract under this section shall be made to
24 the responsible and responsive entity whose proposal is determined in writing
25 to be the most advantageous to the governmental authority, taking into
26 consideration the evaluation factors set forth in the request for proposals.

27 (7) The governing authority of the municipality or the
28 sanitation authority shall employ an appropriately licensed professional who
29 is independent of the contractor to monitor and perform an independent review
30 and inspection of the design-build-operate-maintenance contract, or any part
31 thereof, during its performance.

32 (8) Before soliciting proposals for a design-build-operation-
33 maintenance project, the governing authority of the municipality or the
34 sanitation authority shall employ an appropriate licensed professional to
35 perform the necessary studies and preliminary design to clearly establish the
36 parameters for the project, including:

- 1 (A) Acceptable processes and structural alternatives; and
- 2 (B) Cost estimates for the acceptable alternatives.

3 (k)(1) The state, an agency of the state, a county, a municipality, a
4 school district, or other local taxing unit shall not require in plans or
5 specifications that a bidder or supplier:

6 (A) Hold membership in any professional or industry
7 associations, societies, trade groups, or similar organizations;

8 (B) Possess certification from any professional or
9 industry associations, societies, trade groups, or similar organizations as
10 steel building fabricators; or

11 (C) Be endorsed by any professional or industry
12 associations, societies, trade groups, or similar organizations.

13 (2) However, plans and specifications may include or reference
14 standards adopted by professional or industry associations, societies, trade
15 groups, or similar organizations.

16 (1) A municipality by resolution may waive the requirements of
17 competitive bidding in exceptional situations if deemed not feasible or
18 practical.

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